



# **Fair Work Amendment (Transitional Arrangements—Western Australian Local Government Employers and Employees) Regulations 2022**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 December 2022

David Hurley  
Governor-General

By His Excellency's Command

Tony Burke  
Minister for Employment and Workplace Relations

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## 1 Name

This instrument is the *Fair Work Amendment (Transitional Arrangements—Western Australian Local Government Employers and Employees) Regulations 2022*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2023.	1 January 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Fair Work Act 2009*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *Fair Work Regulations 2009*

#### 1 After Part 6-4C

Insert:

### **Part 6-4D—Transitional matters relating to employers etc. ceasing to be national system employers etc.**

#### **Division 1—Western Australian local government employers etc.**

##### **6.07D Definitions**

In this Division:

**endorsement** means the *Fair Work (State Declarations—employers not to be national system employers) Endorsement 2022 (No. 1)*.

**non-preserved FWC application** means an application or referral:

- (a) made by a preserved affected person to the FWC; and
- (b) made by the preserved affected person:
  - (i) in or in relation to the person’s capacity (at the time of the conduct that is the subject of the application or referral) as a national system employer or national system employee; or
  - (ii) in respect of another person’s capacity (at the time of the conduct that is the subject of the application or referral) as a national system employer or national system employee; and
- (c) that is not a preserved FWC application.

**preserved affected person** means any of the following:

- (a) an employer listed in Schedule 1 to the endorsement;
- (b) an individual who, before the transition time, was employed or usually employed by, or a prospective employee of, an employer mentioned in paragraph (a);
- (c) an employer organisation of which an employer mentioned in paragraph (a) was, before the transition time, a member;
- (d) an employee organisation, a registered employee association or an industrial association that, before the transition time, represented the industrial interests of an individual mentioned in paragraph (b).

**preserved FWC application** means an application or referral:

- (a) made by a preserved affected person to the FWC under a provision in Part 2-2, 3-2, 3-5 or 6-2 of the Act; and
- (b) made by the preserved affected person:
  - (i) in or in relation to the person’s capacity (at the time of the conduct that is the subject of the application or referral) as a national system employer or national system employee; or

- (ii) in respect of another person's capacity (at the time of the conduct that is the subject of the application or referral) as a national system employer or national system employee.

**transition time** means the time when the endorsement commences.

Note: The endorsement commences on 1 January 2023.

### **6.07E Purpose of this Division**

This Division is made for the purposes of paragraphs 14A(1)(a) and (b) of the Act.

### **6.07F Transitional—FWC matters**

*Applications after the transition time*

- (1) A preserved affected person may make a preserved FWC application after the transition time in relation to conduct occurring before that time.
- Note: Conduct includes an omission: see the definition of **conduct** in section 12 of the Act.
- (2) The FWC may dismiss a preserved FWC application if the FWC is satisfied that:
- (a) an application (the **other application**) has been made to another body in relation to the same conduct; and
  - (b) in dealing with the other application, the other body:
    - (i) is or will be dealing with the same, or substantially the same, matters as the matters that the FWC would be likely to deal with if the preserved FWC application were not dismissed; and
    - (ii) has available to it the same, or substantially the same, remedies that the FWC would be likely to apply in respect of the preserved FWC application if that application were not dismissed.
- (3) Subregulation (2) does not limit when the FWC may dismiss a preserved FWC application.

Note 1: For other powers of the FWC to dismiss applications, see section 587 of the Act.

Note 2: An application may be dismissed on the initiative of the FWC or on application: see subsection 587(3) of the Act.

*Continuing matters*

- (4) After the transition time, the FWC may, in accordance with the Act, deal with or continue to deal with:
- (a) a matter commenced by a preserved FWC application in relation to conduct occurring before that time (whether the application was made before or after the transition time); or
  - (b) an appeal under section 604 of the Act in respect of such a matter; or
  - (c) a review under section 605 of the Act of a decision in respect of such a matter; or
  - (d) a matter that is relevant to a preserved affected person in the person's capacity (at the time of the conduct that is relevant to the matter), or in respect of another person's capacity (at the time of the conduct that is relevant to the matter), as a national system employer or national system employee, in respect of which:

- (i) a question of law has been referred to the Federal Court under subsection 608(1) of the Act (whether the referral occurs before or after the transition time); or
- (ii) a court has exercised jurisdiction under section 562 of the Act, section 39B of the *Judiciary Act 1903* or paragraph 75(v) of the Constitution (whether the jurisdiction is first exercised before or after the transition time).

Note: Paragraph (d) of this subregulation covers matters commenced by any kind of application or referral including, but not limited to, preserved FWC applications.

*Discontinuing matters*

- (5) After the transition time, the FWC must not deal with or continue to deal with a matter that is commenced by a non-preserved FWC application (whether the application was made before or after the transition time), other than a matter mentioned in paragraph (4)(d).

## **6.07G Transitional—court proceedings**

*Proceedings instituted after the transition time*

- (1) After the transition time, a preserved affected person may institute proceedings in a court in relation to conduct occurring before that time:
  - (a) if the person were a national system employer at the time of the conduct— as if the person were still a national system employer; or
  - (b) if the person were a national system employee at the time of the conduct— as if the person were still a national system employee; or
  - (c) if the person is an employer organisation, and the employer in respect of which the proceedings are instituted was a national system employer at the time of the conduct—as if that employer were still:
    - (i) a national system employer; and
    - (ii) a member, in the employer’s capacity as a national system employer, of the organisation; or
  - (d) if the person is an employee organisation, a registered employee association or an industrial association, and the employee in respect of which the proceedings are instituted was a national system employee at the time of the conduct—as if:
    - (i) that employee were still a national system employee; and
    - (ii) the industrial interests of that employee, in the employee’s capacity as a national system employee, were still represented by the employee organisation, registered employee association or industrial association (as applicable).

Note: Conduct includes an omission: see the definition of **conduct** in section 12 of the Act.

*Continuing matters*

- (2) After the transition time, a court may deal with or continue to deal with a matter (whether the matter was instituted by proceedings before or after the transition time) if:
  - (a) the matter is relevant to a preserved affected person:



- (i) in or in relation to the person's capacity (at the time of the conduct relevant to the matter) as a national system employer or national system employee; or
  - (ii) in respect of another person's capacity (at the time of the conduct relevant to the matter) as a national system employer or national system employee; and
- (b) the court had jurisdiction, before the transition time, to deal with the matter.